

February 15, 2012

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Time Warner Cable)	File No. CSR-8578-C
)	MB Docket No. 12-15
Petition for Finding of Bad Faith)	
Retransmission Consent Negotiations)	
)	
KVOA Communications, Inc.)	
KRIS-TV, Corpus Christi, Texas)	
To: The Secretary's Office		
Attn: The Media Bureau		

REPLY

KVOA Communications, Inc. ("Cordillera"), by its attorneys and pursuant to Section 76.7 of the Commission's rules, 47 C.F.R. § 76.7, hereby files this Reply to the Opposition and Answer of Time Warner Cable Inc. to Petition for Finding of Bad Faith Retransmission Consent Negotiations in the above-captioned docket.¹

I. INTRODUCTION AND SUMMARY

For more than two months now, Time Warner Cable Inc. ("TWC") has deprived its Corpus Christi, Texas customers of KRIS-TV's local and NBC-affiliated national programming, as well as local CW affiliate KRIS-DT2, local Telemundo affiliate K22JA-D (formerly K68DJ) ("KAJA"), and local independent station K47DF ("KDF") (collectively, the "Stations"). Indeed, it has been 37 days since TWC even made any offer at all, and it has made no counteroffer to Cordillera's most recent concessions. During that time, TWC subscribers have been denied hundreds of hours of local news, sports, weather, and information programming and popular national programming events like the

¹ See Opposition and Answer of Time Warner Cable Inc. to Petition for Finding of Bad Faith Retransmission Consent Negotiations, File No. CSR-8578-C, MB Docket No. 12-15 (filed Feb. 1, 2012) (the "Opposition").

NFL playoffs and the Super Bowl. Since it dropped the Stations, TWC has continued to negotiate in bad faith, making just two “offers,” neither of which realistically reflect today’s retransmission consent marketplace.

TWC’s Opposition offers more of the same bad faith. The Commission should reject TWC’s fanciful rendition of the facts, its responses to arguments Cordillera has not made, its policy grandstanding on retransmission consent issues long ago decided by Congress and the FCC, and its paranoid allegations of collusion and misconduct by Cordillera. This is a straightforward case of TWC seeking to throw its weight around in a mid-sized broadcast market by demanding preferential, substantially below-market carriage terms, dropping the Stations despite an offer of an extension, and then basically refusing to negotiate further. Under any reasonable construction of the FCC’s rules, this conduct demonstrates bad faith.

Cordillera tolerated TWC’s bad faith negotiations for over a month before seeking enforcement of the Commission’s good-faith bargaining rules in early January. TWC responded by threatening meritless legal action over perfectly truthful and legitimate KRIS-TV advertising and then filing the Opposition, which contains more groundless charges designed solely to consume the Commission’s and Cordillera’s resources, punish Cordillera for refusing to accept a retransmission consent agreement that is inconsistent with marketplace conditions, and bludgeon Cordillera into accepting substantially discounted terms. Far from defending its conduct, the Opposition reveals TWC’s true motive: to highjack the negotiation of a fair, market-based retransmission agreement and make it part of TWC’s national policy strategy at the expense of Corpus Christi viewers. Absent Commission intervention, the Opposition shows that TWC has no intention of complying with the requirements of the Act or the FCC’s rules. The Commission should grant the Petition expeditiously and require TWC to engage in good faith negotiations with Cordillera.

II. TWC CONTINUES TO NEGOTIATE IN BAD FAITH.

A. The Opposition Confirms That TWC Has Failed To Negotiate Within the Meaning of Sections 76.65(b)(1)(i) and (v).

TWC claims it has satisfied its duty to negotiate under Section 76.65(b)(1)(i) merely because it has made several offers to Cordillera and engaged in related discussions.² TWC essentially argues that it satisfies the rules by simply going through the motions of negotiating, regardless of whether its negotiating practices or substantive positions reflect a good faith desire to reach an agreement. The FCC's rules require that negotiations must evidence a "sincere desire to reach [an] agreement"³ that reflects "competitive marketplace conditions."⁴ TWC's practices of making successive non-market offers and then refusing to make any offers at all for long stretches of time fall far short of this standard.

With open contempt for clear statutory and regulatory requirements, TWC contests any obligation to offer market-based terms for retransmission consent because it maintains there is "no genuine market for retransmission consent" and broadcasters' retransmission consent rights are "artificial."⁵ TWC's disagreement with its unequivocal legal obligations does not absolve TWC from its duty to negotiate agreements that reflect the marketplace.⁶ Despite TWC's gross exaggeration of Cordillera's claims, Cordillera has never suggested that the Act or the FCC's rules

² Opposition at 12-13.

³ 47 C.F.R. §76.65(a)(2).

⁴ *Implementation of the Satellite Home Viewer improvement Act of 1999*, 15 FCC Rcd 5445, 5458 (2000).

⁵ Opposition at 14.

⁶ These are the same policy positions that led TWC to seek wholesale Commission intervention in the retransmission consent marketplace to artificially constrain the market for local television broadcast signals. Amendment of the Commission's Rules Related to Retransmission Consent, *Notice of Proposed Rulemaking*, MB Docket No. 10-71, FCC 11-31 (rel. Mar. 3, 2010). Contrary to TWC's smug assertions, there is no "irony" in Cordillera's opposition to TWC's efforts to enlist the FCC's aid in its scheme to avoid paying market-based rates for retransmission of local broadcast signals and its request here that the Commission enforce its existing rules. Markets function properly only when participants play by the rules, and TWC's refusal to carry out its legal obligation to negotiate is a legitimate threat to an otherwise well-functioning market.

require TWC to conclude a retransmission consent agreement with Cordillera or that the FCC can or should establish what rates or other terms must be part of the parties' agreement.⁷ There is no dispute, however, that the Act and the rules do require TWC to recognize and respond to the market for the Stations' signals and make retransmission consent offers that reflect that market. TWC's two non-market offers since it dropped the Stations fail this test by a wide margin.

TWC argues that it satisfied its duty to negotiate by continuing to talk to Cordillera's negotiator during the long periods between TWC's rare counteroffers.⁸ These discussions, however, never led to offers that reflected any desire on TWC's part to make a deal. To the contrary, the record shows that TWC consistently "negotiated" points and then made proposals that completely ignored the supposed negotiations.⁹ TWC's practice of exchanging emails and conducting marathon "negotiating" sessions and then producing offers that reflect neither the market nor the parties' discussions do not satisfy TWC's duty to negotiate under Section 76.65.¹⁰

⁷ Opposition at 3-4.

⁸ *Id.* at 12.

⁹ See Opposition, Exhibit A (email from Tim Noble to Alexis Johnson dated Jan. 10, 2012 at 7:50 pm).

¹⁰ TWC's lengthy counterstatement of the facts substantially misrepresents the negotiations evidenced by the email messages included in its attached Exhibit A. The emails speak for themselves, however, so Cordillera will refrain from a point-by-point refutation of TWC's manipulation of the record. A few of TWC's misrepresentations from the redacted versions of the emails, however, must be corrected. First, TWC claims that Cordillera's proposed rate decrease by the end of November was "nowhere near 30 percent." Opposition at 6-7. Actually, the precise figure is a 34 percent decrease in the total compensation sought by Cordillera's first offer on October 25, 2011, and its third offer on November 30, 2011. Cordillera will submit the figures upon the Commission's request. Second, TWC claims that "all this time" (presumably the month of November) TWC "continued to make concessions on price and non-price terms." TWC made one offer in October and one offer in November. The rate difference between those offers was a single penny increase in years one and three, a half penny increase in year two, and a one and one half penny increase in year four. Thus, TWC "continued" to make rare offers without "concessions." Third, TWC's claim that its January 9, 2012, offer contained a proposed rate increase that was "in line with the earlier movements of both parties over the past three months" is simply false. TWC proposed a deal that would lock Cordillera into receiving below-market compensation for the Stations through 2016 and offered only a two penny rate increase in exchange for that demand. The rest of TWC's factual statement is similarly unreliable and the Commission should ignore it.

TWC also claims that its perfunctory engagement in negotiations since it dropped the Stations on December 12, 2011, have satisfied its duty to respond to Cordillera's offers since that time.¹¹ The undisputed facts say otherwise. After TWC chose to drop the Stations (despite Cordillera's continued authorization of retransmission consent), it waited a full week to respond to Cordillera's previous offer. TWC claims that it was "eager to get a deal done,"¹² but when Cordillera did not assent to TWC's lowball December 19, 2011, offer, TWC waited 19 days to counter. During this period TWC repeatedly promised and failed to deliver counteroffers. And TWC knew before it made its January 9, 2012, offer that Cordillera would not accept it, because Cordillera had made clear that it could not accept a contract term through 2015, let alone TWC's new proposal of a term through 2016. In the 37 days since January 9, 2012, TWC has done no negotiating at all, simply complaining about Cordillera's refusal to accept TWC's January 9 offer and Cordillera's decision to expose TWC bad faith negotiations to public and Commission scrutiny by filing the complaint.¹³

TWC's position that this represents the type of responsive bargaining required by Section 76.65 is unsustainable. The long delays between TWC's offers and its failure to make reasonable counteroffers within competitive marketplace parameters demonstrate TWC's desire to use its leverage as the dominant cable provider to force Cordillera to accept a non-market retransmission consent agreement.

TWC's strategy of appearing to negotiate without really responding to Cordillera's positions is strongly linked to TWC's dishonest public relations campaign in which it consistently claims that Cordillera has forced it to drop the Stations and that TWC remains available "seven days a week" to make a deal.¹⁴ If TWC admits that it has no intention of concluding a market-based retransmission

¹¹ Opposition at 12-13.

¹² *Id.* at 8.

¹³ See Exhibit A, attached hereto.

¹⁴ Mike D. Smith, *Corpus Christi TV Blackout One of Only Two Nationwide for Time Warner, Company Says*, CORPUS CHRISTI CALLER.COM, Jan. 7, 2012, available at

consent agreement and simply breaks off negotiations, then it will be harder to play the victim in the press. But Section 76.65 is not about preserving TWC's public relations strategy. It requires TWC to engage in legitimate, back-and-forth negotiations. TWC's long delays and non-market offers simply fail to satisfy that requirement.

B. The Totality of the Uncontested Circumstances Demonstrate TWC's Bad Faith.

TWC's argument that its conduct constitutes good faith under the "totality of the circumstances" misapprehends both Cordillera's claims and the Commission's rules. TWC's sole argument on this question is that the rules don't require TWC to accept Cordillera's offers or pay the rates Cordillera demands.¹⁵ Cordillera agrees, but those points do not exonerate TWC's bad faith conduct in this case. The totality of the circumstances test is designed to catch instances of bad faith that do not amount to violations of a party's *per se* negotiating obligations under Section 76.65(b)(1).¹⁶ Thus, even if TWC's "negotiation in name only" strategy satisfied the *per se* requirements, TWC still is guilty of bad faith because its overall conduct fails to reflect "competitive marketplace conditions" or evidence a "sincere desire to reach agreement."

First, TWC cannot deny that it dropped the Stations despite Cordillera's offer of continued retransmission consent. TWC tries to dress up this naked exercise of its market power by claiming that Cordillera's proposed terms for the extension were a "pretext" to increase the Stations' future leverage.¹⁷ This argument is unsupported by the record. It is a typical practice in retransmission consent negotiations to grant extensions through the end of a given month. That is what the parties

<http://www.caller.com/news/2012/jan/07/corpus-christi-tv-blackout-one-of-only-two-for/>; Mike D. Smith, *Time Warner Drops KRIS-NBC, Other Television Stations*, CORPUS CHRISTI CALLER.COM, Dec. 13, 2012, available at <http://www.caller.com/news/2011/dec/13/time-warner-cable-drops-kris-nbc-other-television/>.

¹⁵ Opposition at 13-15.

¹⁶ 47 C.F.R. § 76.65(b)(2).

¹⁷ TWC's new objection to Cordillera's request that any future agreement be retroactive to the expiration date of the previous retransmission consent agreement is a purely *post hoc* rationale for its

did in November and Cordillera merely proposed that they do the same in December. Nothing in the negotiations between the parties suggested that Cordillera would have been unwilling to grant a further extension after December 31, 2011 if negotiations continued to progress. Quite the contrary, Cordillera's negotiator specifically informed TWC that if negotiations were moving forward, Cordillera would be likely to grant subsequent extensions, even through March if need be. TWC's proposal of an immediate extension through March 30, 2012, however, would have destroyed any urgency to closing the gap between the parties and reaching a deal. TWC's arbitrary and unreasonable insistence on an extension only through December 12, 2011 or all the way through March 2012 is strong evidence that it was not seeking to bargain in good faith, but rather was trying to force Cordillera to take whatever agreement TWC proposed.

Second, TWC's blatantly dishonest advertising campaign against Cordillera bears all the hallmarks of bad faith. TWC continues to falsely advertise that Cordillera is demanding a 400% rate increase when TWC itself admits that it has never before been required to pay per subscriber rates for Cordillera's programming.¹⁸ Comparing the relative value of the advertising exchange component of the previous retransmission consent agreement with the proposed payment terms for the deal under discussion is a classic apples to oranges comparison, but that hasn't stopped TWC from serving up the 400% statistic to the public without explanation. Moreover, TWC continues to falsely advise consumers that Cordillera pulled the signals when in fact TWC elected not to accept Cordillera's offer of an extension.¹⁹ These are simply not the actions of a party seeking a deal in good faith.

Third, TWC's decision to punish Cordillera for refusing to accept its below-market offers and seeking Commission relief by raising spurious legal claims on multiple fronts demonstrates its bad

conduct. Opposition at 7. This is the first time Cordillera has heard of that objection, it is not included in any of the correspondence submitted by TWC, and it should not be taken seriously.

¹⁸ See *Fighting Rising Costs: Local Channels, Corpus Christi Texas*, available at <http://twcconversations.com/local/> (last visited Feb. 10, 2012).

¹⁹ See *id.*

faith. The record already contains TWC's baseless cease and desist letter alleging that perfectly truthful advertisements violated the law and threatening legal action if the ads were not changed.²⁰ Now, the Opposition raises a battery of additional meritless claims and demands an investigation to determine whether Cordillera's licenses should be revoked.²¹ As demonstrated below, TWC's exaggerated claims and draconian demands are entirely groundless, but TWC's call to simply eliminate Cordillera is about the clearest possible evidence of TWC's malignant bad faith. TWC's abuses of the FCC's legal process matches its negotiating strategy. Both are designed to drain Cordillera's resources and force it into submission, not to find a mutually acceptable solution to the parties' negotiating impasse. TWC's over-the-top Opposition confirms it will not cease its scorched-earth tactics absent Commission intervention.

III. CORDILLERA IS IN FULL COMPLIANCE WITH THE COMMISSION'S GOOD FAITH NEGOTIATION AND OWNERSHIP RULES.

TWC's scatter-shot efforts to portray Cordillera as acting in violation of the Communications Act and the Commission's rules fail completely. Nothing in Cordillera's negotiations with TWC suggests bad faith, and Cordillera is not operating its news or advertising sales operations in an anti-competitive manner. Likewise, TWC's wild claim that Cordillera has assumed control over KZTV(TV) is meritless and shows just how far TWC will go in its bad faith efforts to force Cordillera to accept its retransmission consent terms.

A. Cordillera Has Not Engaged in Anticompetitive or Bad Faith Conduct.

TWC claims that Cordillera is using its shared services agreement with Corpus Christi station KZTV(TV) to "facilitate collusion in the negotiation of retransmission consent."²² But KRIS-TV

²⁰ See KVOA Communications, Inc., Supplement to the Record, File No. CSR-8578-C, MB Docket No. 12-15 (filed Jan. 26, 2012).

²¹ Cordillera fully addresses TWC's baseless allegation of anticompetitive conduct and violations of the ownership rules in Section III below.

²² Opposition at 17.

and KZTV(TV) have not colluded in any way in the negotiation of retransmission consent, and TWC presents no evidence that they have. To the contrary, the two stations negotiate their own separate retransmission consent deals with local and national MVPDs.²³ KRIS-TV's negotiations are handled by Tim Noble, and KZTV(TV)'s negotiations are handled by Louis Wall, the President and CEO of SagamoreHill Broadcasting.²⁴ This is exactly the type of arrangement TWC says that it wants – the stations negotiate separate deals separately. TWC's collusion allegations therefore are totally false.²⁵

TWC next argues that Cordillera is inappropriately using KZTV(TV) as a conduit for public criticism of TWC.²⁶ TWC objects to KRIS-TV and KZTV(TV)'s reporting of TWC's decision to drop the Stations and their providing information to viewers about alternatives for receiving the Stations' signals. There is nothing anticompetitive or inappropriate about KRIS-TV and KZTV(TV) reporting the news or providing viewers with useful information about alternative video providers. The story is obviously newsworthy because it is being covered by every major news outlet in the Corpus Christi market, including the market's dominant daily newspaper, the Corpus Christi *Call-*

²³ KZTV(TV)'s retransmission consent agreement with TWC has not yet come up for renewal since SagamoreHill acquired the station. When it does, Cordillera understands that SagamoreHill will follow the same practice it has established in its negotiations with other MVPDs by negotiating directly with TWC without Cordillera's participation.

²⁴ In the fall of 2011, Mr. Noble helped coordinate communications between Mr. Wall and Mr. Noble's contacts at TWC to facilitate carriage of KZTV(TV)'s HD signal pursuant to that station's existing retransmission consent agreement. Mr. Noble did not communicate with TWC for purposes of negotiating the agreement; negotiations were handled by Mr. Wall.

²⁵ TWC's effort to draw parallels between the conduct of Cordillera and SagamoreHill and actions by the former owners of KRIS-TV and KZTV(TV) addressed in a 16-year old consent decree utterly fails. Opposition at 18-19. In that case, the Justice department found that the stations had coordinated their retransmission consent negotiations to extract higher rates from the local cable operator. Here, KZTV(TV) is currently carried on TWC's cable system and is not in negotiations with TWC. TWC cites no evidence of any collusion between Cordillera and SagamoreHill and the parties have not coordinated their negotiations with TWC.

²⁶ Opposition at 17-18.

Times,²⁷ and the local ABC affiliate, KIII-TV.²⁸ Nor can TWC legitimately complain about the content of the coverage of the story because for every news story KRIS-TV or KZTV(TV) have aired on the dispute, comment was sought from TWC, and TWC refused to offer any. TWC can hardly claim that stories aired on the stations are unfair when it refused to provide its side of the story.

Contrary to TWC's allegations, the fact that both KRIS-TV and KZTV(TV) aired segments about the dispute is not evidence of bad faith or anticompetitive collusion. The stations operate pursuant to a Commission-approved shared services agreement under which KRIS-TV is responsible for producing the news on KZTV(TV), subject to the oversight and approval of SagamoreHill.²⁹ In recognition of SagamoreHill's control over the newscasts broadcast on the station, KRIS-TV's general manager, Tim Noble, contacted Mr. Wall and requested his approval of coverage of the ongoing story. Thus, the coverage aired on KZTV(TV) only after Mr. Wall exercised independent judgment and approval. As described above, that news judgment has been confirmed by every major news outlet in the market, so it can hardly be evidence of bad faith.

TWC next argues that airing coverage of the dispute on KZTV(TV) is evidence of bad faith because in a competitive market KZTV(TV) would be glad that KRIS-TV would be dropped and would seek to capitalize on KRIS-TV's misfortune by ignoring the story and seeking to sell more ads.³⁰ This misguided argument is unsurprising coming from TWC, which has no local public interest obligations, no responsibility to serve the information needs of its subscribers, and, since it offers no local news programming in Corpus Christi, apparently no inclination to actually keep viewers informed about important community events. TWC strangely assumes that any concerns that might drive news decisions other than bottom line profits are illegitimate and evidence of bad

²⁷ See, e.g., stories cited at n.14, *supra*.

²⁸ *Corpus Christi TV viewers could miss Super Bowl*, <http://www.kiiitv.com/story/16677438/corpus-christi-tv-viewers-could-miss-super-bowl>. Corpus Christi's other local television station, KUQI(TV), airs no local news.

²⁹ See *Sagamore Hill of Corpus Christi, LLC*, 25 FCC Rcd 2809 (MB 2010) ("*SagamoreHill*").

faith. As local television broadcasters, KRIS-TV and KZTV(TV) are required to serve not only their business interests, but the public interest as well. Broadcasting stories about the unavailability of highly sought video programming on TWC's cable system and the availability of alternatives is part of these stations' fulfillment of those duties, not evidence of bad faith.

TWC also wrongly assumes that KZTV(TV) is not capitalizing on the dispute by increasing its ad sales at KRIS-TV's expense.³¹ In fact, KZTV(TV) local advertising sales are soaring, tracking 45% ahead of 2011 in January and 34% ahead in February. By contrast, KRIS-TV's local advertising was down 39% in January over 2011 figures. KZTV(TV) has benefitted tremendously from the dispute and continues to seize the opportunities it presents.³² TWC's effort to find bad faith in KRIS-TV's offer of make-goods for lost ratings with spots on KZTV(TV) also fails.³³ The Commission approved the joint sales agreement through which KRIS-TV is contractually obligated to sell advertising time on KZTV(TV).³⁴ Under that agreement, KRIS-TV sells local advertising for KZTV(TV) just as it sells such advertising for the Stations. When make-goods are necessary, KRIS-TV follows the industry standard practice of offering advertisers time on whichever of the Stations or KZTV(TV) has inventory to make up the difference. Make-goods for advertising aired on KZTV(TV) might be given on KRIS-TV and *vice versa*. There is nothing unusual or inappropriate about such arrangements.

Finally, TWC's claims of bad faith through collusion between KRIS-TV and KZTV(TV) are highly ironic when TWC recently engaged in very public displays of cooperation with its supposed

³⁰ Opposition at 17-18.

³¹ *Id.*

³² Pursuant to the Commission-approved JSA between KRIS-TV and KZTV(TV), KZTV(TV) retains 70% of the revenue from all advertising sold for KZTV(TV).

³³ Opposition at 17-18.

³⁴ *SagamoreHill*, 25 FCC Rcd at 2813-14.

competitor DirecTV, teaming together to host joint Super Bowl parties in Corpus Christi.³⁵ TWC and DirecTV are supposed to be in fierce competition for viewers, and TWC has relied on that supposed competition to escape rate and other regulation throughout the county. If the local MVPD market were in any way competitive, one would expect DirecTV to be exploiting the opportunities created by the absence of the Stations from TWC systems. Instead, these supposed competitors are teaming up to blame KRIS-TV for TWC's failure to negotiate in good faith. If the Commission seeks to use this proceeding to investigate anticompetitive behavior, investigating the relationship between TWC and DirecTV would be a more fruitful place to start than reviewing conduct by KRIS-TV and KZTV(TV) that the Commission approved less than two years ago.

B. TWC's Charge of an Unauthorized Transfer of Control Is Further Evidence of Its Implacable Bad Faith.

TWC's final unsubstantiated allegation in this case is that KRIS-TV has assumed control over the operations of KZTV(TV), and it incredibly asks that KRIS-TV's license be revoked as a result.³⁶ One would expect that any party involved in a serious proceeding before the FCC, let alone one of the country's largest and most influential media conglomerates, would have done a little more due diligence before leveling such an explosive charge and demanding such a serious remedy. The fact that TWC elected to pursue this tactic after the Commission fully examined and approved the stations' operating agreements less than two years ago makes its conduct even more egregious.³⁷ Instead, TWC seeks to further drain Cordillera's resources and advance its retransmission consent policy agenda by demanding an unnecessary investigation of the parties' previously approved agreements apparently based solely on cursory Internet research.

³⁵ See Time Warner Cable, DirecTV host joint Super Bowl parties, *available at* <http://www.fiercecable.com/story/time-warner-cable-directv-host-joint-super-bowl-parties/2012-02-07>.

³⁶ See Opposition at 19-23.

³⁷ See *Sagamore Hill*, *supra*.

TWC's one "smoking gun" allegation is that Tim Noble, general manager of KRIS-TV, has assumed operational control over KZTV(TV).³⁸ This allegation is based solely on a KZTV(TV) news webpage entitled "Meet the Team," which near the bottom listed Mr. Noble as "President and General Manager." The "Meet the Team" web page is primarily dedicated to highlighting KZTV(TV)'s on-air news staff.³⁹ This is one of the pages accessible under the "About Us" tab on KZTV(TV)'s website. Certainly, TWC also saw, but conveniently chose to ignore, the more relevant information available at the "About Us" tab on the website. That page clearly states that the actual station manager of KZTV(TV) is William Schutz, who is employed by SagamoreHill and reports directly to Mr. Wall in that capacity.⁴⁰

The reality is that Mr. Noble has no management responsibilities over KZTV(TV). As General Manager of KRIS-TV, Mr. Noble has management authority over the news operation that supplies news to KZTV(TV) and the joint sales operation under the Commission-approved shared services agreement. Mr. Noble's news-related duties explain why he was listed on the "Meet the Team" page, which is primarily dedicated to the KZTV(TV)'s news operation. Mr. Noble uses the title "President and General Manager" in performing his duties, but the inclusion of that title on the "Meet the Team Page" and the omission of Mr. Schutz's name was not meant to convey that Mr. Noble is President and General Manager of KZTV(TV).⁴¹ The page has been changed to reflect Mr. Schutz's position as station manager of KZTV(TV), and to eliminate any potential confusion, Mr. Noble's name has been removed from that page.⁴²

³⁸ See Opposition at 21-22.

³⁹ See *id.*, Exhibit G.

⁴⁰ See Exhibit B, attached hereto; Declaration of Tim Noble, attached hereto as Exhibit C.

⁴¹ See Exhibit C.

⁴² See Exhibit D, attached hereto.

Contrary to TWC's superficial and self-serving conclusions, KRIS-TV and KZTV(TV) observe the management separation required by the Commission's rules and the *SagamoreHill* decision. Mr. Noble is the general manager of KRIS-TV and Mr. Wall exercises ultimate management responsibilities over KZTV(TV) and employs management level employees in Mr. Schutz and Director of Programming and Traffic, Sherry Lemerond. TWC claims that "KZTV shares virtually all of its management personnel with KRIS" based on a comparison of the stations' websites.⁴³ Actually, the respective employee lists confirm Cordillera's compliance with the rules because each of the employees identified by TWC are in the news or sales departments, areas that are the subject of the FCC-approved services provided by KRIS-TV to KZTV(TV).⁴⁴ Examples of the personnel that do not appear on both websites include Mr. Wall, who retains authority over all station operations, Mr. Schutz, and Ms. Lemerond. Mr. Wall exercises ultimate authority over KZTV(TV)'s affairs and, together with Mr. Schutz and Ms. Lemerond, manages KZTV(TV)'s non-news, non-advertising program schedule that is not news.

As described above, Mr. Noble does not "dictate KZTV news content,"⁴⁵ nor does he dictate advertising content on KZTV(TV). KZTV(TV) retains the authority to refuse to air news programming produced by KRIS-TV or advertisements sold by KZTV. In this case, KRIS-TV specifically discussed the issue of airing coverage of the dispute between Cordillera and TWC and coverage did not air on KZTV(TV) until Mr. Wall's approval was received. In all events, Cordillera and SagamoreHill remain in full compliance with the FCC's rules, and TWC's allegations provide no basis for further investigation.

⁴³ See Opposition at 21-22.

⁴⁴ See *id.* n.78 & Exhibit G. Pursuant to the parties' Commission-approved operating agreements, the stations have the same Chief Engineer, News Director, Director of Sales, Internet Content Manager, Internet Sale Director, and Director of News Brands and Marketing.

⁴⁵ *Id.* at 22.

The Commission also should decline TWC's invitation to consider in this proceeding issues raised in its open proceedings regarding Joint Sales Agreements and attribution of Shared Services Agreements.⁴⁶ The Commission has developed its policies in these areas over many years based on *bona fide* cases and rulemakings generating extensive comments. The wisdom of its policies permitting JSAs and SSAs is amply demonstrated in Corpus Christi. Prior to SagamoreHill's purchase of KZTV(TV) and the initiation of the JSA and SSA with Cordillera, KZTV was facing bankruptcy and considering the elimination of all news operations in a market where one of the other Big 4 affiliates, Fox affiliate KUQI(TV), already did not provide local news. The result has been an expanded news operation for KZTV(TV) and significant strengthening of the station's financial footing. Putting the Commission's ownership and attribution rules into the service of TWC's desire to save money on its retransmission consent agreements would not serve the public interest.

IV. CONCLUSION

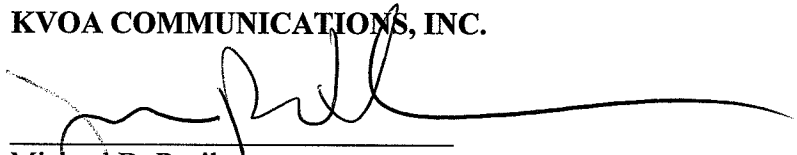
Unfortunately for Corpus Christi cable customers, TWC appears irrevocably committed to a pattern of bad faith negotiations and policy grandstanding, and there is no end in sight to the parties' dispute. The record before the Commission, however, now thoroughly demonstrates TWC's ongoing

⁴⁶ *Id.* at 19-20.

bad faith and calls for expedited Commission action. The Commission should grant the Petition forthwith and require TWC to negotiate with Cordillera in conformity with the Commission's rules.

Respectfully submitted,

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February 15, 2012

Its Attorneys.

EXHIBIT

A

JANUARY 2012 CORRESPONDENCE

Folliard, Robert

From: Tim Noble [tnoble@kristv.com]
Sent: Friday, February 03, 2012 3:09 PM
To: Johnson, Alexis
Cc: ZZNoble, Tim
Subject: FW: TWC / KRIS

Alexis:

Our 1/10/12 counter offer, in response to your offer of 1/9, also remains on the table.
The rates are as follows:

2011: [REDACTED] **2012:** [REDACTED] **2013:** [REDACTED] **2014:** [REDACTED]

I am available all weekend to re-address the carriage terms (along the lines we discussed at length in December and as I previously outlined in my e-mail of 1/10/12) if our rates are acceptable to Time Warner. If so, let me know so we can reach a deal before the Super Bowl.

Send me an email and I will respond immediately.

Sincerely,

Tim

Timothy P. Noble
President and General Manager
KRIS Communications
301 Artesian Street
Corpus Christi, Texas 78401
361.886.6111 Direct
361.654.1623 Fax
tnoble@kristv.com
KZTV Owned by SagamoreHill Broadcasting LLC

From: Johnson, Alexis [mailto:alexis.johnson@twcable.com]
Sent: Friday, February 03, 2012 12:36 PM
To: Tim Noble
Subject: RE: TWC / KRIS

Tim,

This is just a quick note to remind you that our last formal proposal dated January 9, 2012 remains on the table if you would like to reach a deal before Sunday. Please feel free to contact me at any time before Sunday if Cordillera is interested in accepting the terms of this proposal.

Best Regards,

2/15/2012

Alexis

Alexis B. Johnson | Vice President, Content Acquisition
TIME WARNER CABLE
60 Columbus Circle | New York, NY 10023
alexis.johnson@twcable.com
w: 212.364.8476 | f: 704.973.7362

From: Tim Noble [mailto:tnoble@kristv.com]
Sent: Wednesday, February 01, 2012 10:26 AM
To: Johnson, Alexis
Cc: Dan Stein
Subject: RE: TWC / KRIS

Alexis,

We communicated our last good faith proposal 21 days ago. During that time, you have not made a counter-proposal and your last message suggests you have no intention of doing so.

During the last two months, we have negotiated deals or are negotiating with three other top cable/satellite operators. Those discussions have confirmed that our current offer to TWC of [REDACTED] (plus [REDACTED] for the few months in 2011) is squarely within today's market for our must-have local news and programming. That experience confirms that our proposal is, contrary to your characterization, realistic, fair, reasonable, and consistent with today's marketplace.

At this point, our offer remains on the table, but TWC's unwillingness to attempt to resolve the impasse it has created may, at some point, require us to re-evaluate our position.

While we do not intend to negotiate against ourselves and make another proposal, we remain willing and available to discuss a reasonable proposal from TWC regarding both financial and carriage terms. We sent you the last offer; the ball remains in your court.

Regards,

Tim
Timothy P. Noble
President and General Manager
KRIS Communications
301 Artesian Street
Corpus Christi, Texas 78401
361.886.6111 Direct
361.654.1623 Fax
tnoble@kristv.com
KZTV Owned by SagamoreHill Broadcasting LLC

From: Johnson, Alexis [mailto:alexis.johnson@twcable.com]
Sent: Friday, January 27, 2012 4:43 PM
To: Tim Noble

2/15/2012

Subject: RE: TWC / KRIS

Tim,

I have conducted this entire negotiation in good faith. Good faith negotiation does not require us to respond to every one of your rate proposals with a matching increase -- or, frankly, an increase at all. My last email tried once again to explain TWC's position and why the proposal we made is a good and appropriate offer to be considered. We remain hopeful that you will entertain making a more realistic proposal.

Best regards,

Alexis

Alexis Johnson

Vice President, Content Acquisition

Time Warner Cable

60 Columbus Circle

New York, NY 10023

alexis.johnson@twcable.com

w: 212-364-8476

f: 704-973-6256

From: Tim Noble [mailto:tnoble@kristv.com]

Sent: Tuesday, January 24, 2012 4:53 PM

To: Johnson, Alexis

Cc: Dan Stein; Tim Noble

Subject: RE: TWC / KRIS

Alexis:

We sent you a proposal on January 10, which your email from 1/19 completely ignores. Our proposal is as follows:

2011: [REDACTED]

2012: [REDACTED]

2013: [REDACTED]

2014: [REDACTED]

In my email, I also laid out exactly why your carriage terms for CW and KDF would not work for either channel. It has been two weeks now. All we have received from Time Warner are letters demanding minor changes to our public announcements and your email, which completely ignores our proposal. We would appreciate a good faith response to our proposal.

I am sure your customers will be very upset if their only option for the Super Bowl will be via streaming from NBC.com or hooking up an over-the-air antenna. They will be especially upset if high demand at NBC.com causes network slowdowns.

In any event, if you plan to continue to negotiate, I am ready to reciprocate. Otherwise, please spare me your lectures about how we are naïve by seeking a 3-year deal at rates that all major cable and satellite operators are paying KRIS-TV and other broadcasters. Both you and I know that Time Warner's last "offer" was substantially below the market rate for broadcast programming.

We also do not need any more insults about our programming or suggestions that we offer nothing of value to Time Warner or its subscribers. KDF has the ONLY primetime local news in the market -- not even the local FOX

2/15/2012

affiliate provides local Corpus Christi news at 9 pm. KDF has exclusive, high value sports content including ACC basketball and the San Antonio Spurs. For these very good reasons, every cable operator including Time Warner and your over builder Grande has carried KDF for years. KAJA also adds significant value for Time Warner's customers. KAJA is the Telemundo affiliate in the #26 Spanish-language market in the country. If Time Warner didn't want to carry Telemundo, then why did you immediately go through the trouble of replacing KAJA with the national Telemundo feed (which I suspect you are paying for)? As for our CW channel, Time Warner and virtually every other cable operator carries CW on virtually every cable system. Pretending that Time Warner neither wants nor needs these channels is not only absurd, it just confirms the lengths that Time Warner will go to create an impasse and score your political points rather than actually negotiate in good faith.

We will await your response to our proposal, assuming Time Warner would like to begin negotiating again. If, however, Time Warner intends to simply lecture us and avoid actually negotiating, save us all the time and just say so.

Sincerely,

Tim

Timothy P. Noble
President and General Manager
KRIS Communications
301 Artesian Street
Corpus Christi, Texas 78401
361.886.6111 Direct
361.654.1623 Fax
tnoble@kristv.com
KZTV Owned by SagamoreHill Broadcasting LLC

From: Johnson, Alexis [mailto:alexis.johnson@twcable.com]

Sent: Thursday, January 19, 2012 6:02 PM

To: Tim Noble

Subject: TWC / KRIS

Tim,

I'm disappointed that your reaction to our last proposal was to institute a proceeding at the FCC to which we will have to undertake wasteful spending to combat your frivolous claims. Your accusations about the propriety of our proposals and characterizations of our conduct really surprised me. While you and I failed to agree on the price for retransmission consent, I hardly think we should be accused of not making several very valuable proposals to you – and I think it's important for you to take a step back and review with some perspective where this negotiation stands and how we got here.

Our prior retransmission consent deal required compensation to you in the form of a minimum guaranteed advertising purchase, which translated to a monthly payment of approximately [REDACTED] – an amount for which we received commensurate marketing value in connection with such ad buys. The last proposal that we made in December prior to being forced to discontinue carriage of the stations was for a monthly payment in 2012 of [REDACTED] in cash – an amount that was more than triple the prior amount of compensation, and for which we would receive zero marketing value (and which amount we since have increased in our most recent proposal). Your 2012 rate proposal at the time was [REDACTED] which represented an increase in guaranteed compensation to you of about 450% over what we previously were required to pay. Even today your proposal of [REDACTED] for 2012 represents a 400% increase over the [REDACTED] ad buy (if measured solely with respect to guaranteed

2/15/2012

compensation without regard to the value that we received back via an ad purchase).

It's also worth noting that a cash payment wasn't the sole avenue by which we offered to provide consideration to you. As you know, we have no obligation to carry low-power stations that don't have must-carry rights. Nevertheless, we proposed maintaining carriage of both your independent station and your Telemundo-affiliated station, as well as your CW-affiliated multicast – and we even have proposed to dedicate valuable bandwidth to launch the HD versions of your Telemundo and CW feeds once you make them available. I think it's safe to assume that TWC's continued broad distribution of these three programming streams (and the corresponding Telemundo and CW HD feeds) would provide ample ad sales opportunities for you, and thus this in-kind consideration has immense value.

We have reached retransmission consent agreements covering hundreds of stations over the last few years. Each negotiation presents a different fact pattern; we evaluate the particular value we may provide to the broadcast station owner, depending among other things on the particular station(s), their programming, and the particular needs of the owner involved. The duration of the deal also is an important consideration. Generally, we regard the stability of a longer term to have more value, but again that may depend on the owner and the stations involved. Because every negotiation takes into consideration such a wide variety of factors, your suggestion that there is some established minimum value that we must pay to you, or that there is a standard duration for retransmission consent agreements, is naïve and oversimplifies the complexities of our business dealings with broadcast stations owners across the country.

We are confident that the compensation package we have proposed – which presents to you a robust cash payment with very healthy year-over-year increases across a term that gives both of us stability for several years, along with guaranteed carriage of three programming streams to which you have no entitlement to carriage even had you elected must-carry for KRIS – provides more than fair consideration for retransmission consent. We believe that the path you seem determined to pursue at the FCC will be fruitless, and it will leave you no closer to resumed carriage on TWC systems than exists today, while causing a waste of valuable time and resources for our respective companies. As such, we encourage you to accept our proposal so that we may return your stations to our lineup and work toward a relationship going forward that is beneficial to both of our companies as well as our customers and your viewers. I look forward to hearing from you.

Regards,

Alexis

Alexis Johnson

Vice President, Content Acquisition

Time Warner Cable

60 Columbus Circle

New York, NY 10023

alexis.johnson@twcable.com

w: 212-364-8476

f: 704-973-6256

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2/15/2012

EXHIBIT B

KZTV(TV) “About Us” Webpage

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OVERVIEW

KZTV-TV is the CBS television affiliate for Corpus Christi, Texas. We began broadcasting in 1956. The station is currently owned by SagamoreHill Broadcasting LLC.

Quick Facts:

Location: Corpus Christi, Texas
Branding: Action 10 News
Channels: Analog: 10 (VHF) and Digital: 18 (UHF)
Affiliations: CBS
Owner: SagamoreHill Broadcasting LLC
First Air Date: September 30, 1956
Former Affiliations: ABC (secondary, 1956-1964)

CBS CONTACT INFORMATION

CBS Headquarters
 51 W. 52nd Street
 New York, NY 10019-6188
 1-212-975-4321
www.cbs.com

CLOSED CAPTIONING CONTACT INFO

**For Closed Captioning Concerns Please
 Contact Our Captioning Hotline:**

Phone: 361-882-8133
 Fax: 361-654-1675
 Email: swest@kristv.com


**Written Closed Captioning Complaints
 Should Be Directed to the Following:**

Mr. William Schutz
 Station Manager
 SagamoreHill Broadcasting LLC
 301 Artesian Street
 Corpus Christi, TX 78401
 Phone: 361-883-7070 x103
 Fax: 361-654-1675

Before sending a formal written complaint, we recommend you first contact our captioning hotline. We may be able to resolve your problem immediately without the need for a formal complaint. In any event, we will respond to your complaint within 30 days.

Six state of the art facilities to serve you:

- Corpus Christi
- Alice
- Aransas Pass
- Portland
- Rockport
- Calallen/Five Points



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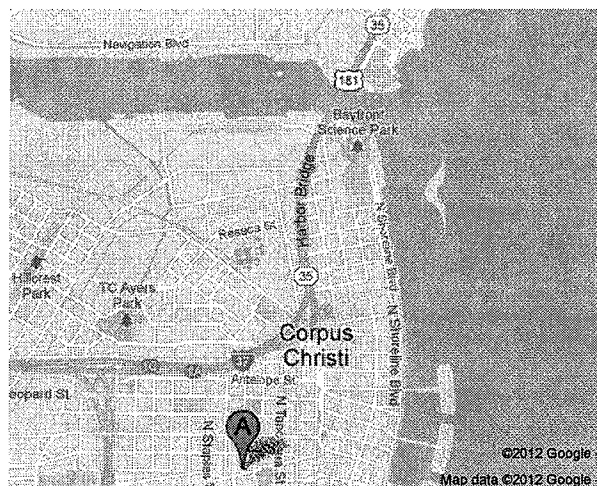
VIDEO ON DEMAND

BE OUR GUEST GOLF SPAS DINING TRAVEL **HALF OFF DEALS**



'CHEECH'
LOOKING FOR A GOOD HOME

6:00 NEWS

[View Larger Map](#)

Pet of the Week: 'Cheech' Needs a Home



Hundreds Killed in Honduran Prison Fire



Man Shot in Both Legs Outside Bar



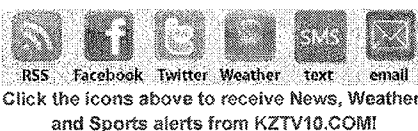
Motorists Lift Truck to Free Pinned Man



Matt's Wednesday Afternoon Forecast

**SUBMIT BREAKING NEWS**

Do you have a tip or information about a breaking news story? Contact the KZTV 10 News Desk at **361-883-7070 x151** or send us an email.

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EXHIBIT C

Declaration of Timothy P. Noble

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)

Time Warner Cable)

Petition for Finding of Bad Faith)
Retransmission Consent Negotiations)

KVOA Communications, Inc.)
KRIS-TV, Corpus Christi, Texas)

File No. CSR-8578-C

MB Docket No. 12-15

To: The Secretary's Office
Attn: The Media Bureau

DECLARATION OF TIMOTHY P. NOBLE

1. My name is Timothy P. Noble, and I am the General Manager of KRIS-TV, KRIS-DT2, K22JA-D (formerly K68DJ) ("KAJA"), and K47DF ("KDF") (collectively, the "Stations"). As part of my duties, I represent the Stations in retransmission consent negotiations with multichannel video programming distributors, including cable operators, that provide service to the Corpus Christi, Texas Designated Market Area. I have been participating in retransmission consent negotiations for 8 years.

2. In the performance of my duties, I have represented the Stations in retransmission consent negotiations with Time Warner Cable ("TWC") since October of 2011. I have first hand knowledge of all the correspondence and telephone communications that have comprised the parties' negotiations.

3. I have reviewed the foregoing Reply and declare that the facts contained therein regarding the negotiations between the Stations and TWC are true and correct.

4. I further declare that the facts contained in the Reply regarding management, staffing, and operation of KRIS-TV and KZRV(TV) are true and correct.

5. In particular, I would like to clarify that I am not now, nor have I ever been President or General Manager of KZTV(TV). I interact with KZTV(TV) pursuant to a joint advertising sales agreement and shared services agreement through which I am responsible for overseeing the provision of news programming the KZTV(TV). It is my understanding that the other day-to-day operations of KZTV(TV) are coordinated and controlled by Mr. Louis Wall, President and Chief Executive Officer of SagamoreHill Broadcasting, licensee of KZTV(TV), Station Manager William Schutz, and Director of Programming and Traffic Sherry Lemerond.

6. One of the web pages on KZTV(TV)'s web site listed me as "President and General Manager" and I have reviewed the screenshot attached to TWC's Opposition and Answer reflecting

the same. To the extent that web page suggested that I am General Manager of KZTV(TV), that web page was incorrect. I recently reviewed KZTV(TV)'s website and confirmed that my name and title have been removed.

7. I further declare that at all times KRIS-TV and KZTV(TV) have maintained independent operations consistent with the FCC's rules and the FCC's approval of the application to assign the license for KZTV(TV) from Eagle Creek Broadcasting of Corpus Christi to SagamoreHill of Corpus Christi Licenses, LLC.

8. The signature block of my previous declaration listed me as "President and General Manager of KRIS Communications." Please note that the use of the term "President" in my title "President and General Manager" is for honorific purposes. I do not hold the corporate office of President of any business organization involved in the ownership or operation of KRIS-TV or KZTV(TV). Moreover, KRIS Communications is not an incorporated business entity. It is a trade name used by me and other representatives of KVOA Communications, Inc. for purposes of selling advertising and conducting other business that pertains to the Stations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 15, 2012



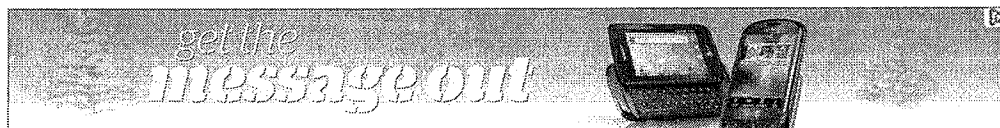
Timothy P. Noble
General Manager
KRIS-TV, KRIS-DT2, KAJA, and KDF

EXHIBIT D

Current KZTV(TV)
“Meet the Team” Webpage

MEMBER CENTER | [Create Account](#) | [Log In](#) Search/Keyword

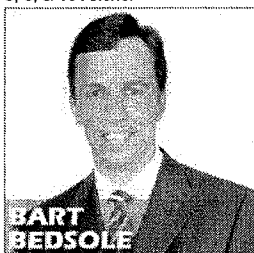
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 2222 Morgan Ave., Suite 110
 Corpus Christi, TX 78405
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ACTION 10 NEWS TEAM

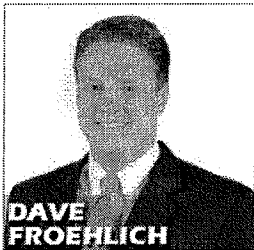
5, 6, & 10 Anchor



5, 6, & 10 Anchor



Sunrise & Noon Anchor



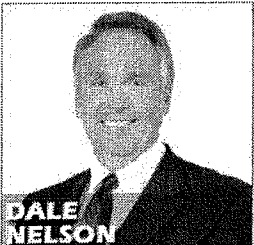
Sunrise Anchor / Multi-Media Journalist



Weekend Anchor / Multi-Media Journalist

**DOPPLER 10 WEATHER TEAM**

Chief Meteorologist



Sunrise & Noon Meteorologist



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Hundreds Killed in Honduran Prison Fire



Man Shot in Both Legs Outside Bar



Motorists Lift Truck to Free Pinned Man



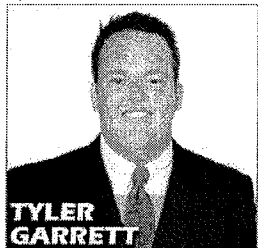
Matt's Wednesday Afternoon Forecast

Weekend Meteorologist



ACTION 10 SPORTS TEAM

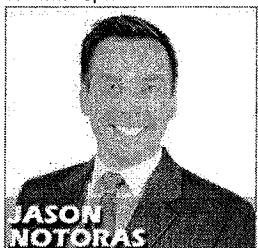
Sports Director



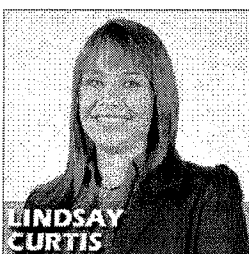
Weekday Sports



Weekend Sports



ACTION 10 NEWS MULTI-MEDIA JOURNALISTS



AdChoices

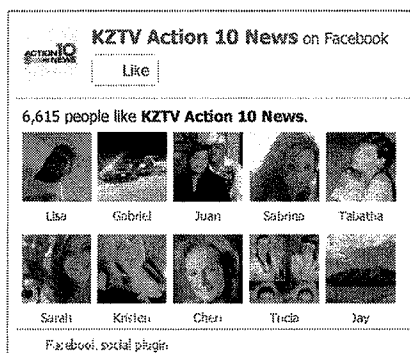
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10 News Team

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MANAGEMENT

William Schutz	Station Manager	email	Phone: 654-1689
Sandra Richards	News Director	email	Phone: 886-6173
Steve West	Chief Engineer	email	Phone: x1650
Jim Birschbach	Director of Sales	email	Phone: x6131
Arlene Warden	Internet Sales Director	email	Phone: x6113
Barbara Beresford	Director of News Brands and Marketing	email	Phone: x6147
Sherry Lemerond	Director of Programming and Traffic	email	Phone: x1686
Andrew Lesh	Internet Content Manager	email	Phone: x6148
Anthony Gloria	IT Manager	email	Phone: x108



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CERTIFICATE OF SERVICE

I certify that on this 15th day of February, 2012, I caused the foregoing Reply to be served by first-class mail, except where indicated by *, on the following:

William T. Lake*
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Michelle Carey*
Deputy Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mary Beth Murphy*
Chief, Policy Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ronald Parver*
Assistant Chief, Policy Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Steven N. Teplitz
Cristina Pauzé
Time Warner Cable Inc.
901 F. St., NW
Suite 800
Washington, D.C. 20004

Suzanne M. Tetreault*
Acting Chief, Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

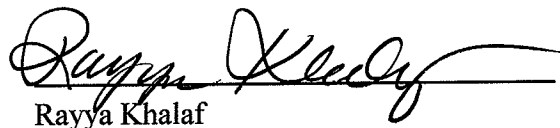
Nancy Murphy*
Associate Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Steven A. Broeckaert*
Deputy Chief, Policy Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Matthew A. Brill
Matthew T. Murchison
Amanda E. Potter
Latham & Watkins LLP
555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20004

Marc Lawrence-Apfelbaum
Jeff Zimmerman
Julie P. Laine
Time Warner Cable Inc.
60 Columbus Circle
New York, New York 10023

* via email


Rayya Khalaf